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MCDERMOTT WILL & EMERY LLP
18191 VON KARMAN AVE.
SUITE 500
IRVINE, CA 92612-7108

EXAMINER	
BODDEN, EVRAL E	

ART UNIT	PAPER NUMBER
2192	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/787,225	FAUSAK, ANDREW T.	
	Examiner	Art Unit	
	Evral Bodden	2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 May 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 - 12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 - 12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to the following communication: Amendment to application 10/787,225 filed May 11, 2007.

Claims 1 - 7 have been amended and pending.

Claims 8 - 12 have been added and pending.

Specification

2. Prior rejection is overcome.

Claim Rejections - 35 USC § 112

3. **Claims 8, 9,** and **10** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 recites the limitation " the generated computing task specification" in lines 5 - 6 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 9 recites the limitation " the group " in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "generating a computing task" in line 3 of the claim, but then only refers to "the computing task". The claim should specify "the generated computing task" at lines 3, 5, 9, and 10. The claim also specifies that it "encapsulates parameters" in line 4, but then refers to "the parameters". The claim should specify: "the encapsulated parameters" in line 6.

Claim Rejections - 35 USC § 101

4. **Claims 1 – 9** are rejected under 35 U.S.C. 101 because the claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

In regards to **claims 1 and 8**, descriptive material can be characterized as either "functional descriptive material" or "non-functional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component". MPEP 2106.01. Both types of "descriptive material" are non-statutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). "Functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized" is thus statutory. MPEP 2106.01 (I). Specifically, as the claims are drafted, there is no specified executable interaction between the task specification generator, and the task interpreter, and hence it's non-functional.

Merely claiming non-functional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer."). MPEP 2106.01(II). Furthermore, claim 8 merely recites "A computer-readable medium, including software code", that is software per se.

In regards to **claim 2 – 7,** and **9**, they do not remedy the base claims issues, thus, they are also rejected for the same reason as set forth above.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1 - 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wookey 2002/0147974 A1, in view of Paul et al. (hereinafter Paul) 6,466,972B1, and further in view of Montero et al. (hereinafter Montero) 2005/0204181 A1 (art made of record).

In regards to **claim 1**, Wookey also teaches:

executing preboot execution specification, comprising: a computing task specification generator (P. 2, [0013], lines 7-10, see create output files).

a computing task interpreter; wherein a generated computing task specification[Is]] encapsulates[[ing]] parameters dependent on an execution environment (P. 2, [0013], lines 7-10, see create output files).

the generated computing task specification[Is]] [[are]]is polymorphic with respect to the encapsulated parameters, as well as to the multiple phases of generating and executing preboot execution specification (P. 2, [0013]). It's inherent that the installation is "polymorphic" since it's done in numerous stages. In regards to operating in a pre-boot environment, most pre-load environment configuration collection for the purpose of loading software, occurs pre-boot, since a re-boot has to occur after software is loaded; for the loaded software to operate effectively.

Wookey fails to teach the use of an encapsulated object-oriented polyphase language for specifying computing task. However Paul defines machine templates using an encapsulated object-oriented polyphase language for specifying computing tasks booting (P. 2, lines 48-52, see "machine classes").

Wookey and Paul fails to teach the use of the feature which encapsulates parameters dependent on an execution environment without knowing the execution environment. However, Montero, in the same analogous art of system software configuration, defines such a task (P. 2, [0015], lines 17 –18, see "identify and configure unknown devices, connected to a network").

Accordingly it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the systems of Wookey to incorporate the use of object-oriented class templates for creating encapsulated object oriented classes, as taught by Paul, with configuring unknown devices connected to a network as taught by

Montero, because the use of object oriented machine classes, with the combination of XML as taught by Wookey (P. 6, claim 5), would offer the advantage of being platform independent, as well as incorporate the advantages of object oriented programming, as suggested by Wookey (P. 3, [0020], lines 1 – 13). Said system would teach every limitation of claim 1.

In regards to **claim 2**, Wookey teaches:
executing preboot execution specification comprise: a definition phase, wherein computing tasks are defined (P. 2, [0013], lines 7-10, see create output files).
a generating phase, wherein specifications for the computing tasks are generated (P. 2, [0013], lines 7-10, see create output files).
an execution phase, wherein the specifications for the computing tasks are executed (P. 2, [0013], lines 12 - 16). In regards to operating in a pre-boot environment, most pre-load environment configuration collection for the purpose of loading software, occurs pre-boot, since a re-boot has to occur after software is loaded; for the loaded software to operate effectively.

In regards to **claim 3**, Wookey teaches:
the behavior of the language itself is polymorphic with respect to the multiple phases of generating and executing preboot execution specification. (P. 2, [0013]) and (P. 2, [0015], lines 5 – 20). It's inherent that the installation is "polymorphic" since it's done in numerous stages.

In regards to **claim 4**, Wookey teaches:
the computing tasks are configured to accomplish image installation (P. 2, [0010], lines 7 – 8).

In regards to **claim 5**, Wookey teaches:

the computing tasks are configured to accomplish platform imaging (P. 2, [0010], lines 4 - 6).

In regards to **claim 6**, Wookey teaches:

the computing tasks are configured to accomplish remote imaging (P. 2, [0010], lines 4 - 9).

In regards to **claim 7**, Wookey teaches:

the computing tasks are configured to accomplish remote booting (P. 2, [0015], lines 18 - 21).

Claims 8 - 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wookey 2002/0147974 A1, in view of Montero et al. (hereinafter Montero) 2005/0204181 A1 (art made of record).

In regards to **claim 8,** Wookey also teaches:

software code, comprising: a computing task interpreter (P. 2, [0013], lines 7-10, see create output files).

computing task specification, wherein the computing task specification encapsulates parameters dependent on an execution environment (P. 2, [0013], lines 7-10, see create output files).

the generated computing task specification is polymorphic with respect to the parameters, as well as to generating and executing preboot execution specification (P. 2, [0013]). It's inherent that the installation is "polymorphic" since it's done in numerous stages. In regards to operating in a pre-boot environment, most pre-load environment

configuration collection for the purpose of loading software, occurs pre-boot, since a re-boot has to occur after software is loaded; for the loaded software to operate effectively.

Wookey fails to teach the use of the feature which encapsulates parameters dependent on an execution environment without knowing the execution environment. However, Montero, in the same analogous art of system software configuration, defines such a task (P. 2, [0015], lines 17 –18, see "identify and configure unknown devices, connected to a network").

Accordingly it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the systems of Wookey to incorporate the use of configuring unknown devices connected to a network as taught by Montero, because such use would offer the advantage of being platform independent as suggested by Wookey (P. 3, [0020], lines 1 – 13). Said system would teach every limitation of claim 8.

In regards to **claim 9**, Wookey teaches:

the computing task specification is configured to specify a computer task selected from the group consisting of general imaging, platform imaging, remote imaging, remote booting, preboot diagnostics and preboot prepping (P. 2, [0010], lines 4– 9), (P. 2, [0015], lines 18 - 21).

In regards to **claim 10**, Wookey also teaches:

generating a computing task specification in a first device (P. 2, [0013], lines 7-10, see create output files).

computing task specification encapsulates parameters dependent on an execution environment of a second device; and wherein the computing task specification is

polymorphic with respect to the parameters, as well as to the multiple phases of generating and executing preboot execution specification (P. 2, [0013], lines 7-10, see create output files). It's inherent that the installation is "polymorphic" since it's done in numerous stages. In regards to operating in a pre-boot environment, most pre-load environment configuration collection for the purpose of loading software, occurs pre-boot, since a re-boot has to occur after software is loaded; for the loaded software to operate effectively.

transmitting a computing task interpreter from the first device to the second device, the computing task interpreter configured to interpret the computing task specification; and transmitting the computing task specification from the first device to the second device (P. 2, [0013]).

Wookey fails to teach the use of the feature which encapsulates parameters dependent on an execution environment without knowing the execution environment. However, Montero, in the same analogous art of system software configuration, defines such a task (P. 2, [0015], lines 17 –18, see "identify and configure unknown devices, connected to a network").

Accordingly it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the systems of Wookey to incorporate the use of configuring unknown devices connected to a network as taught by Montero, because such use would offer the advantage of being platform independent as suggested by Wookey (P. 3, [0020], lines 1 – 13). Said system would teach every limitation of claim 10.

In regards to **claim 11**, Wookey teaches:

the first device is a server system (P. 3, [0020], lines 1 – 5).

In regards to **claim 12**, Wookey teaches:

the second device is a client system (P. 3, [0020], lines 1 – 5).

Response to Arguments

6. Applicant's arguments with respect to claim 1 - 12 have been considered but are moot in view of the new ground(s) of rejection, see Montero as applied above.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Evral Bodden whose telephone number is 571 272 3455. The examiner can normally be reached on Monday to Friday, 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Dam can be reached on 571 272 3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Evral Bodden

TUAN DAM
SUPERVISORY PATENT EXAMINER